

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 HYUNG SUK KIM and JI HYEON SEOL, and
11 their marital community, and JI HYEON SEOL
12 on behalf of Y.K., a minor,

CASE NO. C20-1467-JCC

13 Plaintiffs,
14 v.
15 STEVE BACK and JANE DOE BACK, and
16 their marital community, and BINEX LINE
17 CORPORATION, a for-profit foreign
corporation,
18 Defendants.

ORDER

18 This matter comes before the Court on the parties' stipulated motion for a Rule 35
19 examination (Dkt. No. 8). Having thoroughly considered the parties' stipulated motion and the
20 relevant record and finding that Plaintiff Hyung Suk Kim's physical condition is in controversy
21 and good cause, the Court hereby GRANTS the motion. A Rule 35 examination of Plaintiff
22 Hyung Suk Kim may be conducted, subject to the following terms and conditions:

23 Date & Time: November 17, 2020 beginning at 12:30 p.m. Pacific Time, lasting
24 no more than two (2) hours

25 Place: Machaon Medical Evaluations
26 Medical Dental Building
509 Olive Way, Suite 1045

1 Seattle, WA 98101
2 Telephone: (206) 323-1999

3 Manner: Physical examination by a licensed orthopedic surgeon and physical
4 rehabilitation doctor.

5 Examiners: Alan Brown, M.D.; Marvin Brooke, M.D.

6 Conditions: Plaintiff Ji Hyeon Seol will be present and will be allowed to
7 accompany Mr. Kim into the Machaon Medical Facility. Plaintiffs
8 will also be allowed to have a single legal observer present in the
9 examination room; however this observer will not video or audio
record the examination. Absent unforeseen circumstances, this will
be the only medical examination conducted pursuant to FRCP 35.
Mr. Kim will not be required to fill out any forms or paperwork prior
to or during the exam.

10 Scope: Drs. Brown and Brooke may each perform a physical examination
11 to include testing for things such as strength, sensation,
12 coordination, reflexes, balance, and a functional assessment. No
13 invasive testing or testing that would cause pain to Mr. Kim shall be
14 performed. Drs. Brown and Brooke may utilize a stethoscope, reflex
15 hammer, flashlight, tape measure, safety pin, scale for weight, and
16 dynamometer to measure grip strength, goniometer to measure angles
17 and an inclinometer to measure turns and bend. No other equipment
18 shall be utilized. A clinical interview and history may also be taken,
but any interview is limited to non-leading, non-argumentative
questions focused on Mr. Kim's medical history and current
condition. Issues pertaining to the Defendants' alleged liability will
not be addressed. Mr. Kim shall remain fully clothed throughout the
examination.

19 Report: Pursuant to FRCP 35(b), Defendants shall produce, a signed,
20 typewritten report setting forth in detail the examiners' findings,
21 including diagnoses, conclusions, and the results of any tests. The
report shall be delivered to Plaintiffs' counsel no later than 45 days
from the date of the examination.

22 Deposition: Defendants will make the examiners available for deposition at a
23 mutually-agreeable time. Plaintiffs shall not be charged for records
24 review, or any other deposition preparation by the examiners.

25 Agreement: Defense counsel shall advise the examiners of the above conditions
26 for the examination, and make sure the examiners agree to all
conditions of this Order.

1 Testimony: The examiner shall not be permitted to testify at trial if the report
2 and deposition are not supplied in compliance with the terms of this
3 Order.

4 DATED this 17th day of November 2020.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE